

**Headnote**

National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* – Securities Act, s. 88 - Cease to be a reporting issuer - The securities of the issuer are beneficially owned by more than 50 persons and are not traded through any exchange or market - The issuer does not have any publicly held securities; issuer's common shares are held by another company that is a reporting issuer in a jurisdiction of Canada; issuer's debt is held by related parties; issuer's preferred shares are held by some of its employees; issuer will provide its employees with regular updates on its affairs and financial position; issuer does not intend to do a public offering of any other securities to Canadian residents; issuer will not be a reporting issuer in any Canadian jurisdiction

**Applicable British Columbia Provisions**

*Securities Act*, R.S.B.C. 1996, c. 418, s.88

February 15, 2013

In the Matter of  
the Securities Legislation of  
British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick,  
Nova Scotia, Prince Edward Island, Newfoundland and Labrador (the Jurisdictions)

and

In the Matter of  
the Process for Exemptive Relief Applications in Multiple Jurisdictions

and

In the Matter of  
Western Financial Group Inc. (the Filer)

Decision

**Background**

The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that the Filer is not a reporting issuer (the Exemptive Relief Sought).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a coordinated review application):

- (a) the Alberta Securities Commission is the principal regulator for this application; and

- (b) this decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

### **Interpretation**

Terms defined in National Instrument 14-101 *Definitions* have the same meaning if used in this decision, unless otherwise defined herein.

### **Representations**

This decision is based on the following facts represented by the Filer:

#### ***General***

1. The Filer is a corporation governed by the *Business Corporations Act* (Alberta) (the ABCA).
2. The Filer's head office is located at 101 - 24<sup>th</sup> Street SE, High River, Alberta T1V 2A6 and its registered office is located at Suite 3700, 400 - 3<sup>rd</sup> Ave SW, Calgary, Alberta T2P 4H2.
3. The Filer is a reporting issuer in each of the Jurisdictions and no other Canadian territories.
4. The Filer is not in default of any of its obligations under the securities legislation of the Jurisdictions as a reporting issuer.
5. Each of the System for Electronic Document Analysis and Retrieval (SEDAR) and System for Electronic Disclosure by Insiders (SEDI) profiles of the Filer are up to date and there are no outstanding fees under the securities legislation of the Jurisdictions required to be paid by the Filer.
6. The Filer is unable to rely on the simplified procedure set out in CSA Staff Notice 12-307 *Applications for a Decision that an Issuer is not a Reporting Issuer* (CSA 12-307) because the Filer will not meet the requirement under CSA 12-307 of having fewer than 15 security holders in each of the provinces of Canada and fewer than 51 security holders worldwide.

#### ***Outstanding Securities***

##### **Authorized Share Capital**

7. The Filer's authorized share capital consists of (i) an unlimited number of common shares (Common Shares), (ii) an unlimited number of redeemable preferred shares (the Redeemable Preferred Shares), (iii) an unlimited number of first preferred shares, which are issuable in series (the First Preferred Shares), and (iv) an unlimited number of second preferred shares, which are issuable in series (the Second Preferred Shares).
8. There are currently no issued and outstanding Redeemable Preferred Shares or First Preferred Shares.

##### **Common Shares**

9. There are currently 315,295,796 Common Shares issued and outstanding, all of which are owned by Desjardins Financial Corporation Inc. (Desjardins).
10. On April 15, 2011, Desjardins acquired approximately 95.5% of the Common Shares pursuant to an offer made by Desjardins on January 21, 2011. On July 12, 2011, pursuant to a second-stage transaction, the Filer amalgamated with 1610338 Alberta Ltd., a direct wholly owned subsidiary of Desjardins, resulting in all of the issued and outstanding Common Shares being held by Desjardins.
11. The Filer's Common Shares were delisted from the TSX Exchange (the Exchange) effective as of close of trading on July 13, 2011.

#### Credit Facilities

12. The Filer has an unsecured credit facility in place with Caisse Centrale Desjardins (CCD), a wholly owned subsidiary of Desjardins, of up to \$10 million for the Filer and up to \$20 million for Bank West, a wholly owned subsidiary of the Filer.
13. The Applicant also has a \$55 million advance, a \$50 million demand loan and a \$32 million subordinated term loan from CCD.
14. Bank West also has a \$150 million revolving loan and an additional \$1.5 million line of credit from CCD.

#### First Preferred Shares

15. On January 1, 2013 (the Redemption Date) the Filer redeemed all of the issued and outstanding First Preferred Shares, series four (the Series Four Shares) at a price of \$100 per share plus accrued and unpaid dividends. Notice of the redemption was delivered on November 12, 2012, was announced by a press release and a copy is available on SEDAR. The Series Four Shares were delisted from the Exchange as of the close of trading on December 31, 2012.
16. The Filer therefore has no outstanding securities traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*.
17. As of the close of trading on the Redemption Date, the only security holders of the Filer are Desjardins, CCD and employees of the Filer holding Employee Preferred Shares (as defined below).
18. The Filer has no plans to conduct a financing through any public offering or private placement of its securities in Canada.

#### ***Employee Preferred Shares***

19. The Filer has issued 3,180,371 Second Preferred Shares, series one, which were created and issued by the Filer to its employees on a voluntary basis (the Employee Preferred Shares) pursuant to an Employee Preferred Ownership and Deferred Bonus Plan (the Plan), which was created after the Common Shares were acquired by Desjardins. The Plan was created to provide a retention mechanism and long term performance-based compensation plan that promotes a strong sense of ownership among employees and executives of the Filer.
20. The Employee Preferred Shares are issued at a price of \$1.00 per share (the Redemption Amount). The holders of Employee Preferred Shares are entitled to receive, if and when declared by the board of directors out of the monies of the Filer properly applicable to the payment of dividends, a preferential, non-cumulative dividend in respect of each calendar year at a rate per annum, from 0% to 10%, as may be determined by the board of directors at the time of such declaration. The dividend rate under the Plan is designed to approximate the rate of increase in free operating cash flow, if any, of the Filer. The Employee Preferred Shares can be redeemed by the Filer at any time at the Redemption Amount, plus accrued and unpaid dividends, if any. Holders of Employee Preferred Shares may also require the Filer to redeem the Employee Preferred Shares at the Redemption Amount at any time. The holders of Employee Preferred Shares are not entitled to receive notice of, to attend or to vote at any meeting of shareholders other than meetings of holders of the Employee Preferred Shares.
21. Under the Plan, after a deferral period which is typically three years from the end of the contribution period during which the Employee Preferred Shares were issued, holders of Employee Preferred Shares are generally entitled to receive a cash bonus equal to a multiple of the amount of Employee Preferred Shares purchased under the Plan during such contribution period.
22. In the event of a voluntary or involuntary liquidation, dissolution or winding up of the Filer, holders of Employee Preferred Shares are entitled to receive, in priority to holders of Common Shares and any other shares ranking junior to the Employee Preferred Shares, an amount equal to the Redemption Amount per share.
23. All Employee Preferred Shares held by an employee of the Filer are automatically redeemed at the Redemption Amount when employment with the Filer ceases. The articles also expressly prevent non-employees from holding Employee Preferred Shares. Under the terms of the Plan no transfers are permitted unless authorized by the board. Therefore, actual and potential holders of Employee Preferred Shares are limited to individuals actively employed by the Filer.
24. There are currently 3,180,371 issued and outstanding Employee Preferred Shares held by 947 employees of the Filer. The number and location of holders of Employee Preferred Shares are as follows: 172 in British Columbia; 416 in Alberta; 80 in Saskatchewan; 267 in Manitoba; 4 in Ontario; and 8 in Québec.
25. The Employee Preferred Shares have been issued pursuant to the employee prospectus exemption (the Employee Exemption) contained in section 2.24 of National Instrument 45-

106 *Prospectus and Registration Exemptions*. They are therefore subject to the conditions in section 2.6 of National Instrument 45-102 *Resale of Securities*, which include the condition that a first trade of Employee Preferred Shares, after the initial distribution, is a distribution unless the Filer is and has been a reporting issuer in a jurisdiction of Canada for the four months immediately preceding the trade. If the Filer were not a reporting issuer, it would still be entitled to rely on the Employee Exemption to issue Employee Preferred Shares without qualifying them with a prospectus.

26. The issuance of Employee Preferred Shares pursuant to the Plan aligns the interests of employees and the Filer, is a fundamental part of the Filer's incentive compensation program and entitles employees to share in future growth of the business.
27. Holders of Employee Preferred Shares have the right, upon 10 days notice, to cause the Filer to redeem the Employee Preferred Shares at the Redemption Amount.
28. The Filer provides the employees with regular updates on its affairs and financial position, in particular:
  - (a) the quarterly and annual financial results of the Filer are posted on the employee accessible internal intranet;
  - (b) the leadership team of the Filer has quarterly meetings to discuss the financial results of the Filer and is encouraged to report and explain such results to the rest of the employees; and
  - (c) the Chief Executive Officer holds a monthly town hall meeting accessible by satellite to all employees to update all employees on the business of the Filer.
29. Desjardins' parent company, Fédération des caisses Desjardins du Québec (Desjardins' Parent), is a reporting issuer in Québec and is required to file continuous disclosure documents. In addition, Desjardins' Parent press releases its financial results on a quarterly basis which is available to holders of Employee Preferred Shares through SEDAR. Thus, holders of Employee Preferred Shares will have access to current information on the entity that indirectly owns all of the Common Shares of the Filer.

### **Decision**

Each of the Decision Makers is satisfied that the decision meets the test set out in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Makers under the Legislation is that the Filer is deemed to have ceased to be a reporting issuer.

Blaine Young  
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